

complaint

Mr S complains that Uncle Buck Finance LLP, trading as Uncle Buck, ("UBF"), gave him loans that he couldn't afford to repay. The complaint is brought to this service by a claims management company but for ease I shall refer below to all actions being taken by Mr S.

background

Mr S was given four payday loans and one instalment loan by UBF between April 2014 and February 2015. The last loan was repayable in three monthly instalments. All loans have been repaid. A summary of Mr S's borrowing from UBF is as follows (I've used the repayment dates shown in UBF's final response letter):

Loan Number	Borrowing Date	Repayment Date	Loan Amount	Repayment amount
1	27/04/2014	24/05/2014	£ 300	£404.85
2	27/05/2014	29/05/2014	£ 600	£809.70
3	31/05/2014	10/07/2014	£ 675	£910.91
4	25/07/2014	25/09/2014	£ 525	£708.49
5	2/02/2015	29/04/2015	£ 575	Three instalments of £274.97, £274.97 and £274.96

Mr S said that UBF had failed to carry out effective assessments. Mr S was dependent on payday loans and stuck in a cycle of borrowing to repay previous loans.

UBF said that it had done a credit check before Loan 1 which confirmed that the monthly income of £2,650 provided by Mr S was accurate. It no longer had a copy of the credit check. It also said that it had obtained details of Mr S's regular expenditure for all of the loans but no longer had details of these for the first four loans. It said that Mr S declared a total income of £3,300 for Loan 2 and that he had said that this was unchanged for Loans 3 and 4. It said that for Loan 5, Mr S had declared an income of £2,700 and regular outgoings of £965. UBF was satisfied that the loan repayments were amounts that Mr S could comfortably repay, although it had offered lower loan amounts than he had requested for some of his applications. It said that this showed that it had checked affordability. But as some of the loans were in quick succession, it said that it ought to have been aware that Mr S was becoming reliant on loans and that it should have probed his finances further for Loan 4. So, it offered to refund interest and charges paid on Loan 4, and pay 8% statutory interest on the refunds.

Mr S rejected this offer.

our adjudicator's view

The adjudicator didn't think that UBF's checks went far enough for any of the loans. But she concluded that Loan 1 was affordable, but Loans 2 to 5 weren't sustainable. In error, the

adjudicator's award didn't reflect the content of her view in that she only provided an award for Loans 3 to 5. But as her view is clear that Loan 2 wasn't affordable, I've also included this in her recommendations below and asked the adjudicator to tell UBF that I will be doing so. The adjudicator recommended that UBF:

- refund all interest and charges that Mr S paid on Loans 2 to 5;
- pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- remove any negative information about Loans 2 to 5 from Mr S's credit file.

*HM Revenue & Customs requires UBF to take off tax from this interest UBF must give Mr S a certificate showing how much tax its taken off if he asks for one.

UBF responded to say in summary that it disagreed that further checks including checking bank statements should have been made for Loan 3. It also queried a reference in the adjudicator's view which said that £1,700 was outstanding regarding Loan 2. It was happy to honour the offer it made in its final response letter with regard to Loan 4. It also thought that a break in lending of around five months between Loans 4 and 5 was enough to suggest that Mr S wasn't reliant on short term lending.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to UBF on 2 November 2018. I summarise my findings:

I noted that UBF had offered to refund the interest and charges on Loan 4 and pay 8% interest on the refunds. So, in these circumstances, I said that I didn't intend to investigate Loan 4 but would refer to it in my award below.

I explained that UBF was required to lend responsibly. It needed to make checks to make sure Mr S could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr S was borrowing, the length of the agreements and his lending history. But there was no set list of checks UBF had to do.

I noted that the Financial Conduct Authority ("FCA") was the regulator at the time Mr S borrowed from UBF. Its regulations require lenders to take "reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences. The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low when compared to Mr S's income, or that he was able to repay all of the loans in full, didn't necessarily mean the loans were affordable and that he was able to repay them in a sustainable manner. So, I couldn't assume that because Mr S was able to repay his loans in full that he was able to do so out of his normal income without having to borrow further.

UBF told us that before lending to Mr S, it had asked him about his income and regular expenditure, and made credit checks. But it had only been able to confirm that Mr S's income was £2,650 and no longer had evidence of his regular outgoings.

The repayment amount for Loan 1 was £404.85. This was a relatively high proportion of Mr S's income. So, I said that I would have expected UBF to have gathered some further information here, such as Mr S's normal living expenses and regular financial commitments. UBF said that it had done this but now had no details of Mr S's outgoings. I noted that the adjudicator had referred to an expenditure amount which had been declared by Mr S to another lender. I said that I wouldn't use that amount here as I noted that Mr S had declared a somewhat different amount to a different lender around the same time. I also didn't have full bank statement information to show Mr S's outgoings for the whole month before Loan 1. But I noted that before Loan 2, a month later, Mr S's bank statement information showed regular outgoings of around £867. So taking the same amount into account here, it appeared that Mr S would have had sufficient disposable income to sustainably repay Loan 1. And there was little to suggest to UBF at this stage that Mr S wasn't using the loan in the way it was intended - as a short term solution to a temporary cash flow problem. So I didn't think UBF was wrong to agree to this loan.

Loan 1 was repaid late. Mr S applied for Loan 2 three days after he repaid Loan 1. The amount he borrowed had doubled with a substantially higher repayment amount of £809.70. But Mr S also declared that his total income had increased to £3,300. As the loan repayment was a significant proportion of Mr S's income, and taking into account that Loan 1 had been repaid late, I thought UBF should've gathered some further financial information here, such as Mr S's normal living expenses, regular financial commitments and whether he had short term lending. Whilst UBF had said that it had obtained details of regular outgoings, I couldn't see that it had gathered information about short term lending. So I didn't think UBF had gathered sufficient information here about Mr S to assess if he could afford to repay the loan.

Mr S took out Loan 3 four days after applying for Loan 2 and two days after repaying Loan 2. The loan amount had increased again to £675 with a total amount payable of £910.91 I thought UBF should have been concerned about the increasing loan amounts, the frequency of the borrowing and especially Mr S's need to borrow again so soon after Loan 2. So, I thought by the time of Loan 3 there was an onus on UBF to look in much more depth at Mr S's true financial situation to assess the affordability of its lending. It could've done this in a number of ways. It could've asked for evidence of Mr S's income and expenditure such as payslips and bills, or it could've looked at things like his bank statements.

Loan 4 was rolled over and repaid late. Loan 5 was taken out just over four months after Loan 4 was repaid. In a different case, I might have thought that was a significant gap, and sufficiently long enough to make UBF think that Mr S's finances might have returned to a more secure footing. But taking into account that Mr S had repaid three of his previous four loans late, I thought Mr S's borrowing history might have suggested to UBF that it could no longer rely on the information Mr S had provided before Loan 5. So, again I thought UBF should have been independently checking what Mr S was earning and spending each month.

Although I didn't think the checks UBF did on Loans 2 to 5 were sufficient that in itself didn't mean that Mr S's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown UBF that Mr S couldn't sustainably afford the loans.

With regard to Loan 2, as I'd said above, I would have expected UBF to ask about Mr S's short term credit commitments as well as his regular expenditure. I'd reviewed his bank statements for the month before Mr S took Loan 2 to see what better checks would have

shown UBF. As well as Mr S's regular expenditure of around £867, I could see that Mr S did have short term loans from other short term lenders totalling £885 which would have been repayable around the same time as Loan 2. But as Mr S's declared income was £3,300, I could see that proportionate checks would have shown UBF that Mr S was able to sustainably repay this loan, while meeting his other regular expenditure and short term lending. So, I didn't think that if UBF had asked Mr S about other short term borrowing that it would have made any difference to its decision to lend to Mr S. So I didn't think UBF was wrong to give this loan to Mr S.

With regard to Loan 3, as I'd said above, I thought UBF should have been independently checking what Mr S was earning and spending each month. So I'd tried to do this by looking at Mr S's bank statements for the month before this loan to see what better checks would have shown UBF. The bank statements might not have shown UBF everything it would've seen by carrying out proportionate checks. But I said that the bank statements were the best indication of Mr S's ability to afford the loan at the time it was approved. So I didn't think it was unreasonable to rely on these.

I noted that if UBF had independently checked Mr S's income, it would have seen that this appeared to be around £2,551. But, it also would have become aware that Mr S was gambling heavily. And to support this gambling expenditure, he had taken short term loans totalling over £3,300 which would have had to be repaid around the same time as Loan 3. Mr S's regular expenditure was around £1,278. So, if UBF had carried out what I considered to be proportionate checks before Loan 3, I thought it was likely that it would have concluded that Loan 3 wasn't sustainable.

In the month before Loan 5, I couldn't see that Mr S's financial position had improved. His monthly income had increased to around £2,932. And I could see that in the month before Loan 5, Mr S had taken short term lending of £500. But his regular expenditure was over £2,800 and he continued to gamble heavily. So, it was clear to me that Mr S had insufficient disposable income to repay Loan 5. So, I thought if UBF had done what I considered to be proportionate checks here, that it would have seen that Loan 5 wasn't sustainable.

In summary I didn't think the checks UBF made on Loans 2, 3 and 5 were sufficient. I thought proportionate checks would have shown UBF the state of Mr S's finances and that Mr S couldn't afford to sustainably repay Loans 3 and 5. So I didn't think UBF should have given Mr S loans 3 and 5, and I thought it needed to pay Mr S some compensation relating to these loans along with what it has already offered in relation to Loan 4.

Subject to any further representations by Mr S or UBF my provisional decision was that I intended to uphold this complaint in part. I intended to order Uncle Buck Finance LLP, trading as Uncle Buck, to:

1. Refund all interest and charges that Mr S paid on Loans 3 to 5;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement and
3. Remove any adverse information about Loans 3 to 5 from Mr S's credit file.

*HM Revenue & Customs requires UBF to take off tax from this interest. UBF must give Mr S a certificate showing how much tax it has taken off if he asks for one.

Mr S said that he accepted the provisional decision and had nothing else to add.

UBF disagreed and responded to say that a fair solution would be for it to refund interest and charges plus statutory interest on Loans 3 and 4. But it didn't agree a similar refund for Loan 5. It said, in summary, that Mr S had provided inaccurate income and expenditure information to it and there had been a large gap between Loans 4 and 5. It said that Mr S had declared a disposable income of £1,735 to it before Loan 5 and so he should have been able to afford the repayments on that loan. It didn't know that Mr S was gambling as he had not disclosed this to it. It also assumed that Mr S's income was augmented by his gambling winnings. In addition it said that it didn't consider that Loan 3 was paid late. It was Mr S's choice to defer payment and roll over the loan. It also didn't agree that Mr S's payslips could be used to verify his expenditure. It also said that Mr S's bank statements would be historic and might be inaccurate.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note that UBF has now offered to refund the interest, charges and statutory interest on Loans 3 and 4. So I shall consider below its concerns in relation to Loan 5 only.

I note that UBF said that the use of bank statements would be historic and might be inaccurate. As I'd said above, I thought UBF should have been independently checking what Mr S was earning and spending before Loan 5. So I'd tried to do this by looking at Mr S's bank statements for the month before this loan to see what better checks would have shown UBF. But an independent check didn't necessarily mean that UBF had to ask Mr S for his bank statements. I agree that a payslip wouldn't show expenditure. But UBF could have asked Mr S for more information about his living costs, other commitments and debts. And it could have asked him to see proof of these in another form or used whatever means it thought appropriate to satisfy itself that it had an accurate picture of Mr S's circumstances.

I also note UBF's concerns that Mr S had provided it with inaccurate information. I think that UBF was entitled to rely on what it was being told up to a point. But I also think that UBF ought to have considered why a person with an apparent high level of disposable income was coming back to it for a fifth loan in just over nine months. And as Mr S had also repaid three of his previous four loans late, I also think Mr S's borrowing history might have suggested to UBF that it could no longer rely on the information Mr S had provided before Loan 5. So I think UBF should have sought more assurances about Mr S's finances.

I note that UBF said that it didn't regard the rollover of loans as late payments, that it was a borrower's choice to defer a loan and that Mr S would have been aware of the extra costs incurred. But I think there comes a point where a lender should realise that repeated rollovers are problematic and might suggest that a borrower is experiencing some financial difficulties when repaying loans.

I also note UBF's reference to a gap in the lending before Loan 5. Loan 5 was taken out just over four months after Loan 4 was repaid. As I'd said above, in some cases I might have thought that was a significant gap, and sufficiently long enough to make UBF think that Mr S's finances might have returned to a more secure footing. But for the same reasons as I've stated above, I don't think that was the case in Mr S's circumstances.

I also note that UBF said that Mr S's income should be augmented by his winnings. Mr S did receive some 'winnings' from gambling but I note from his bank statements for the month before Loan 5 that these were almost £7,000 less than he spent at the time on gambling.

So, as I've said above, if UBF had done what I considered to be proportionate checks, I don't think UBF would have thought the loan repayments on Loan 5 were sustainable for Mr S. So as a responsible lender, I don't think UBF should've approved this loan.

I note UBF's offer with regard to Loans 3 and 4. But, as I think proportionate checks would have shown UBF that Loan 5 wasn't sustainable, I still think it should provide redress for all these loans.

So, after considering the points made by UBF, I'm not persuaded to change my findings from those set out in my provisional decision.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Uncle Buck Finance LLP, trading as Uncle Buck, to:

1. Refund all interest and charges that Mr S paid on Loans 3 to 5;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loans 3 to 5 from Mr S's credit file.

*HM Revenue & Customs requires UBF to take off tax from this interest. UBF must give Mr S a certificate showing how much tax it has taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 January 2019.

Roslyn Rawson
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